



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,991	08/08/2001	Rose Z. Wilde	WIL 2384.1	3602

2147 7590 12/03/2003

GRACE J FISHEL
11970 BORMAN DRIVE
SUITE 220
ST. LOUIS, MO 63146

EXAMINER

DICUS, TAMRA

ART UNIT	PAPER NUMBER
----------	--------------

1774

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

clo 8

Office Action Summary	Application No. 09/924,991	Applicant(s) WILDE, ROSE Z.	
	Examiner Tamra L. Dicus	Art Unit 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 5-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> | 6) <input type="checkbox"/> Other: |

Art Unit: 1774

DETAILED ACTION
Response to Amendment

All rejections are withdrawn.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Applicant has added that crackle medium is adapted to contract when a water-based stain or paint is applied. There is no description of crackle medium which is adapted to contract when water based stain or paint is applied within the specification. The amended and new claims include new matter.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1774

3. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,601,876 to Oates et al. in view of USPN 4,345,044 to Columbus et al.

4. Oates teaches a water based crackle finish for a surface comprises:

(I) a base coating of stain coating on the surface, comprising:

(a) a water soluble low mol. wt. polymer; and

(II) a crackle coating (equivalent to crackle medium) applied on the base coating, comprising

(b) an aq. emulsion of a high mol. wt. polymer.

See Abstract, Figures 1-2, col. 2, lines 15-40, col. 2, line 65-col. 3, line 25. The crackle coating can be colorless or colored (col. 4, lines 5-6). Crackle coating mixture is taught at col. 5, lines 26-60. At col. 3, lines 1-10, Oates discloses the surface crackle coating is applied to a wood surface. Oates further discloses that a top coating may also be included over the crackled coating.

Oates does not disclose a latex wood filler on the crackle coating as recited in instant claim 1. Oates does not teach the wood filler composition as recited in instant claim 4.

However, Columbus teaches an acrylic wood filler where the composition comprises 6-14% acrylic resin, 3-10% talc, 3-65% fillers, and 13-35% water in the abstract. Columbus also teaches applying wood filler to hard surfaces as a coating to provide excellent stain and a natural wood color in the abstract, Examples, col. 1, lines 5-15 and patented claim 1. Oates does not disclose the latex wood filler reaction when applied to crackle coating as instant claim 1. It would have been obvious to one of ordinary skill in the art to modify the crackle finish of Oates to further include the latex wood filler of Columbus because the wood filler of Columbus is used

Art Unit: 1774

as a top coating on wood. The Columbus reference teaches coating wood filler onto surfaces as a top coating as Oates suggests.

Limitations such as "the crackle medium is tack dried before the latex wood filler is applied" (instant claim 2) and "the latex wood filler is embossed with a design before it is dried" (instant claim 3) are process limitations in a product claim. Such process limitations are not limited to the specific method steps, but only to the structure implied by the steps. For example, the structure includes crackle medium and latex wood filler, which the prior art provides. See MPEP 2113.

5. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,601,876 to Oates et al. in view of USPN 4,345,044 to Columbus et al. and further in view of USPN 6,217,336 to Matthews.

Oates and Columbus are relied upon above, but do not teach a kit *per se* of claims 8-10.

Matthews teaches a decorative painting apparatus and method in a kit for walls. The paint of Matthews has included acrylic paint along with paper and other ingredients in a kit for the users convenience at col. 5, lines 40-55 and col. 6, lines 5-30. Hence, it would have been obvious to one of ordinary skill in the art to modify the crackled medium of Oates to include ingredients to be provided in a box since Matthew teaches ingredients in a kit for convenience at col. 5, lines 40-55 and col. 6, lines 5-30. Moreover, Applicant is merely using the instant invention as a kit.

Response to Arguments

6. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 1774

Columbus is still relied upon because Columbus teaches the exact same ingredients in the composition as Applicant instantly claims. Matthew is still relied upon because Matthew teaches putting paints in a kit. Matthew was not used to teach using the ingredients as Applicant alleges. The ingredients have been provided for by Oates and Columbus.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is (703) 305-3809. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on (703) 308-0449. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-8329.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Tamra L. Dicus
Examiner
Art Unit 1774

November 21, 2003

CYNTHIA H. KELLY
SUPERVISOR/EXAMINER
TECHNOLOGY CENTER 1700

